IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.80 OF 2006
IN
WRIT PETITION NO. 696 OF 2005

Vidya Bhushan Manik ..Applicant

Vs.

Commissioner of Police
Brihanmumbai H.O.
Crawford Market, Mumbai
and Ors. ..Respondents

...

Mr.Akhilesh Singh Advocate for Applicant
Mr.V.B.Konde-Deshmukh A.P.P. for State

...

CORAM: D.G.DESHPANDE AND SMT.V.K.TAHILRAMANI,JJ.

DATE : MARCH 20/21, 2006

ORAL ORDER: [PER:D.G.DESHPANDE,J.]

1. This application is filed in Writ Petition No. 696 of 2005. We have heard the learned advocate for the petitioner. The learned advocate for the petitioner does not seem to be aware of our order dated 7th March, 2006 by which, we dismissed the petition when he was absent because prayer in that petition was for a specific event on 27th March, 2005 and since that event was over, the petition

had become infructuous. Therefore, technically application in that petition, is not maintainable. However, we are not going into that aspect on technicality. We have heard the learned advocate for the applicant. The applicant is arranging "Kavi-sammelan" at Kalbadevi Road, Shaikh Memon Street, Kalbadevi Road, Mumbai-400002. The applicant applied to the police for permission. That permission was rejected by the police authority by communication dated 12th March, 2006 at Exhibit-D. In that communication, Senior Police Inspector of L.T.Marg Police Station has given reference to our order dated 7th March, 2006.

2. Counsel for the applicant urged that earlier when he had applied for similar permission, this Court had granted ad-interim order directing the respondent to grant permission to the applicant.

3. However, the learned A.P.P. pointed out that Noise Pollution Regulation Control Rules, 2000 came in the way of the applicant and the permission was rightly rejected. As against this, the counsel for the applicant contended that in Rule 2(b) of the Rules, "the area and zone" have been defined which

inter alia provides that "area and zone" means all areas which fall in either of the four categories given in the Schedule annexed to the Rules. Schedule is given in the Rules. We have reproduced the entire schedule as under:

SCHEDULE
[see rule 3(1) and 4(1)]
[Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area/ Zone	Limits in dB(A) Leq*	
		Day Time	Night time
(A)	Industrial area	75	70
(B)	Commercial Area	65	55
(C)	Residential area	55	45
(D)	Silence Zone	50	40

Notes:

1. Day time shall mean from 6.00 a.m. to 10.00 p.m.

2. Night time shall mean from 10.00 p.m. to 6.00 a.m.

3. Silence Zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared

as such by the competent authority.

4. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority.

. *dB (A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing.

4. Note No.3 to the said Schedule as quoted above, clearly states that "silence zone" is an area comprising not less than 100 metres around hospital, educational institution, courts, religious places or any other area which is declared as such by the competent authority. According to the police report, the place where the applicant proposes to hold "Kavi-sammelan" is within 100 metres of three religious places and one educational institution and therefore, it directly covers the area of silence zone or it is directly hit by the provisions of this Act. As against this, counsel for the applicant contended that area does not fall in the area provided in Note No.3 and according to him, it is only by declaration by competent authority that an area can be brought under the purview of these Rules. He also stated that Notes given to the Schedule, cannot be equated with the definition of the areas and zone and

explanation cannot substitute the definition.

5. We are not in agreement with the submission made by the counsel for the applicant. In the sub-rule (2) of the said Rules, the definition of "all areas and zone" is given but that is not all the definition but it only adds that "all that areas" which fall in either of four categories in the Schedule, shall be the area and zone. Therefore, the Schedule to the Rules is an integral part of the Rules and for the purposes of finding out all area and zone, one has to necessarily bank upon the Schedule. Therefore, the Schedule in any case, cannot be separated and when the Rule gives four categories of areas viz;- (A) industrial area, (B) commercial area, (C) residential area, and (D) Silence Zone and there is note to describe the other aspects and note (B) clearly makes out a provision that as to what "silence zone" shall mean, then it has to be treated that this explanatory Note No.3 as such is part of the definition as a part of the Rules. The definition of "silence zone" therefore, provides an explanation that makes two categories; (1) specified area and (2) other area that may be

declared as such by the competent authority. In this case, second aspect of the matter does not apply i.e. the area need not be declared by the competent authority as a silence zone, because, the area where the proposed function is arranged, is falling within 100 metres of religious places and educational institution.

6. It is true that earlier on two occasions permission was granted by way of ad-interim order. We are now deciding the issue once for all and therefore, since the place where the applicant is willing to hold programme falls in the silence zone, the authorities were justified in rejecting the permission.

7. Application is dismissed.

8. Even though we have rejected the prayer of the applicant on merits, we have heard the parties again to find out whether on humanitarian grounds and looking to the nature of the cultural programme, permission only for this year, can be granted. The matter was kept today. We heard both the sides again.

9. Counsel for the applicant, upon instructions from his client present, made a statement that they will curtail all the other programmes and this programme will be only as "Kavi-Sammelan" and nothing more. Upon this statement, we direct the police officers to grant necessary permission to play loud speaker from 6.00 p.m. to 9.30 p.m. to the applicant. We clarify that this permission is not granted because the applicant has any legal right as that aspect has already been considered and rejected. This should not be treated as precedent in future.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]